

Draft Amendments to Civil Service Rules

Performance Ratings

Revision **A** (July 5, 2001)

[Added text is underlined. Deleted text is ~~struck-through~~]

2-3 Performance ~~Service~~ Ratings

2-3.1 Rating System

(a) Regulations. The state personnel director shall issue regulations to establish a system of Probationary Ratings, Annual Ratings, Interim Ratings, and Follow-up Ratings for appointing authorities to evaluate and report employee performance and behavior. ~~service ratings to report the quality of service rendered by each employee in the classified service.~~

(b) Review. Agency management must review each employee's Probationary Rating, Annual Rating, Interim Rating, and Follow-up Rating with the employee. Both the management and the employee must sign and date each rating as evidence of the review. The employee's signature on the rating does not indicate that the employee agrees with the rating. The employee may file an explanatory statement to accompany the rating.

(c) Use of Ratings.

(1) Use of ratings. A rating may be considered in making human resource decisions, including, for example, promotion, retention, assignment, and training.

(2) Loss of eligibility.

(A) Annual ratings. An employee who receives a *needs improvement* Annual Rating is not eligible for a performance pay award or credit towards reclassification until a later *satisfactory* rating has been issued.

(B) Probationary, interim, and follow-up ratings. An employee who receives an *unsatisfactory* Probationary, Interim, or Follow-up Rating is not eligible for a step increase, a performance pay award, or credit towards reclassification until a later *satisfactory* rating has been issued

(3) No credit.

(A) Annual ratings. Any period during which an employee is rated as *needs improvement* is not counted toward reclassification.

(B) Probationary, interim, and follow-up ratings. Any period during which an employee is rated as *unsatisfactory* is not counted toward a step increase or reclassification.

(d) Report. Each appointing authority shall report or certify Probationary Ratings, Annual Ratings, Interim Ratings, and Follow-up Ratings to the department of civil service as required in the regulations.

2-3.2 ~~Submission~~ Probationary Ratings

(a) Probationary ratings. An appointing authority shall evaluate and rate the performance and behavior of each probationary employee during and at the end of the probationary period, as provided in rule 3-5 [Probation and Status]. ~~The appointing authority shall certify each probationary service rating to the department of civil service as directed by the department.~~

(1) Full-time employment. At a minimum, an appointing authority shall rate a full-time probationary employee after completion of 6 months and again after completion of one year of employment. In addition, if the probationary employee is a new hire without status in the classified service, the following additional Probationary Ratings are required:

(A) ~~¶~~The appointing authority shall also rate the employee after completion of 3 months of employment.

(B) If the employee receives *unsatisfactory* Probationary Ratings at 3 months and 6 months, the appointing authority shall also rate the employee after completion of 9 months of employment.

(2) Less than full-time employment. At a minimum, an appointing authority shall rate a probationary employee working less than full-time after completion of 9 months and again after completion of 18 months of employment. In addition, if the probationary employee is a new hire without status in the classified service, the following additional Probationary Ratings are required:

(A) ~~¶~~The appointing authority shall also rate the employee after completion of 3 months of employment.

(B) If the employee receives *unsatisfactory* Probationary Rating at 3 months and 9 months, the appointing authority shall also rate the employee after completion of 12 months of employment.

(3) Extension of probation. If a probationary period is extended beyond one year (for full-time employees) or 18 months (for less than full-time employees), the appointing authority shall also issue a final Probationary service ~~¶~~Rating no later than 28 calendar days after ~~at~~ the end of the extension of the probationary period.

1 **(b) Probationary rating categories.** Each Probationary Rating must be either *satisfactory*
2 *or unsatisfactory*. Unless provided otherwise in the regulations, an appointing authority
3 *may use any appropriate rating method approved by the department of civil service that*
4 *provides equivalent Probationary Ratings.*

5 **(c) Satisfactory probationary rating.** An overall *satisfactory* Probationary Rating is not
6 discipline and is not grievable.

7 **(d) Unsatisfactory Probationary Rating.** The following apply to *unsatisfactory*
8 Probationary Ratings:

9 **(1) Discipline.** An *unsatisfactory* Probationary Rating is discipline and may be the
10 basis for additional discipline, up to and including dismissal.

11 **(2) Extension of probationary period.** If an employee receives an *unsatisfactory*
12 Probationary Rating but is not dismissed, the appointing authority may extend the
13 probationary period as authorized in rule 3-5.2(b).

14 **(3) Grievance.** An employee may grieve an *unsatisfactory* Probationary Rating only
15 as authorized in rule 3-5.5 [Grievance of Probationary Dismissal or Demotion].

16 **(4) Record.** The employee's employment record must reflect any *unsatisfactory*
17 Probationary Rating.

18 2-3.3 Annual Ratings

19 **(a) Annual ratings required.** An appointing authority shall evaluate and rate the
20 performance of each nonprobationary employee at least annually. ~~The appointing~~
21 ~~authority may use any appropriate rating method, including performance management~~
22 ~~plan ratings, unless the regulations require a particular method. The appointing~~
23 ~~authority shall certify each annual rating to the department of civil service as directed by~~
24 ~~the department.~~

25 **(b) Annual rating categories.** Each employee shall receive an Annual Rating of either
26 *satisfactory* or *needs improvement*. Unless provided otherwise in the regulations, an
27 appointing authority may use any appropriate rating method approved by the department
28 of civil service that provides equivalent Annual Ratings.

29 **(c) Satisfactory annual rating.** An overall *satisfactory* Annual Rating is not discipline and
30 is not grievable.

31 **(d) Needs improvement annual rating.** The following apply to *needs improvement* Annual
32 Ratings:

33 **(1) Grievance.** A *needs improvement* Annual Rating is not discipline, but may be
34 grieved within the departmental steps of the civil service grievance procedure. The
35 employee cannot appeal a final grievance determination of the appointing authority

to the department of civil service unless the Annual Rating was issued in violation of rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(2) Performance improvement plan. If an employee receives a *needs improvement* Annual Rating, the appointing authority must establish a performance improvement plan to monitor the employee's performance, as provided in the regulations.

(c) 2-3.5 — Performance-Ppay Pprogram rating Evaluation System. An appointing authority shall complete a salary review for employees in the following performance-pay groups at the same time as the Annual Rating:

(a) Performance measures. An appointing authority shall establish performance objectives or competencies against which to measure the performance of each employee in the following:

(1) The senior executive service (SES).

(2) The senior executive management assistant service (SEMAS).

(3) Equitable classification plan (ECP) Group 4.

(4) ECP Groups 1, 2, or 3, when the state personnel director has approved the employee's inclusion in the performance-pay program.

(b) Annual review. An appointing authority shall complete a performance appraisal and a salary review for each employee in the performance-pay program at least annually.

(c) Use of appraisal. An The appointing authority shall use the Annual Rating performance appraisal as one factor in determining an the employee's eligibility for an increase in base salary or a lump sum award. A performance appraisal may also be used in other human resource decisions, including promotion, retention, assignment, and need for training.

2-3.4 Interim and Follow-up Ratings

(ae) Interim ratings. An appointing authority may issue an interim service rating for an employee at any time. An Interim Rating is a written evaluation that documents unsatisfactory employee performance or behavior.

(1) Issuance. An appointing authority may issue an Interim Rating for a nonprobationary employee at any time.

(2) Discipline. An Interim Rating is discipline and may be the basis for additional discipline, up to and including dismissal.

(3) Grievance. An employee who receives an Interim Rating may grieve the Interim Rating. If dissatisfied with the final grievance determination of the appointing authority, the employee may appeal to the department of civil service.

(4) Follow-up rating period. If an employee receives an Interim Rating but the employee is not dismissed, the appointing authority shall establish in writing the length of a Follow-up Rating period.

(b) Follow-up rating. A Follow-up Rating is a written evaluation that documents employee performance and behavior during a Follow-up Rating period.

(1) Follow-up rating categories. Each Follow-up Rating must be either *satisfactory* or *unsatisfactory*.

(2d) Issuance. ~~Follow-up ratings. If an employee's performance rating is less than satisfactory but the employee is not dismissed, the appointing authority shall establish in writing the length of a follow-up rating period.~~ The appointing authority shall issue a ~~Follow-up~~ ~~service~~ ~~Rating~~ before or within 14 calendar days after the end ~~of the~~ ~~of the~~ ~~Follow-up~~ ~~Rating~~ period. If the appointing authority fails to issue a ~~Follow-up~~ ~~service~~ ~~Rating~~ within the time allowed, the employee may, within 14 calendar days after the end of the period allowed for issuance of the ~~Follow-up~~ ~~Rating~~, request in writing that the appointing authority issue the ~~Follow-up~~ ~~service~~ ~~Rating~~. If the authority fails to issue the ~~Follow-up~~ ~~service~~ ~~Rating~~ within 14 calendar days after the employee's written request, the employee is returned to satisfactory standing, effective the end of the ~~Follow-up~~ ~~Rating~~ period. However, the return to satisfactory standing does not nullify any prior Interim Rating or ~~unsatisfactory performance Follow-up~~ ~~Rating~~ or preclude the later use of any such rating.

(3) Discipline. An *unsatisfactory* Follow-up Rating is discipline and may be the basis for additional discipline, up to and including dismissal.

(4) Grievance. An employee who receives an *unsatisfactory* Follow-up Rating may grieve the Follow-up Rating. If dissatisfied with the final grievance determination of the appointing authority, the employee may appeal to the department of civil service.

(c) Commission action. If an employee receives an Interim rating and a subsequent *unsatisfactory* Follow-up Rating and the appointing authority has taken no adverse action, the state personnel director may recommend to the civil service commission that the employee be separated from the classified service.

2-3.3 — Unsatisfactory Service Rating

~~If an employee receives a service rating that is less than satisfactory, the appointing authority may discipline the employee, up to and including dismissal. If an employee's last two service ratings are less than satisfactory and the appointing authority has taken no~~

~~adverse action, the state personnel director may recommend to the civil service commission that the employee be removed from the position. An employee who receives a service rating that is less than satisfactory is not eligible to receive a performance pay award or a higher salary step.~~

~~2-3.4 Employee Review~~

~~Agency management shall report each employee's service rating to the employee. If the employee receives a service rating that is less than satisfactory, agency management shall review the rating with the employee. The employee shall sign and date the service rating as evidence of the review. The employee's signature on a service rating does not indicate that the employee agrees with the service rating. The employee may file an explanatory statement to accompany the service rating.~~

2-6 Discipline

2-6.1 Discipline

(a) **Authorized.** An appointing authority may discipline a classified employee for just cause.

(b) **Just cause.** Just cause includes, but is not limited to, the following:

- (1) Failure to carry out the duties and obligations imposed by the employer, a departmental work rule, or law, including the civil service rules and regulations.
- (2) Conduct unbecoming a state employee.
- (3) Unsatisfactory service or performance.

(c) **Forms of discipline.** Permissible discipline includes, but is not limited to, the following:

- (1) ~~An unsatisfactory -less than satisfactory Probationary Rating, -Interim service Rating, or Follow-up Rating.~~
- (2) A written reprimand.
- (3) Reduction in pay.
- (4) Suspension without pay.
- (5) Demotion.
- (6) Dismissal from the classified service.

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3-5 Probation and Status

3-5.1 Probationary Period

- (a) **New employee without status.** A newly appointed classified employee who does not have status in the classified service when appointed must satisfactorily complete a working test period, called a probationary period, and receive a final satisfactory ~~p~~Probationary ~~service-r~~Rating as provided in rule 2-3 [Service Ratings] as a condition of continued employment.
- (b) **Employee with status.** An employee with status who is appointed to a new classification must satisfactorily complete a working test period, called a probationary period, and receive a final satisfactory ~~p~~Probationary ~~service-r~~Rating as provided in rule 2-3 [Service Ratings] as a condition of continued appointment in that position.
- (c) **SES and SEMAS exceptions.** This rule does not apply to persons appointed to positions in the senior executive service (SES) and the senior executive management assistant service (SEMAS).

3-5.2 Length of Probationary Period

- (a) **Minimum length.** The minimum length of a probationary period is 12 months of full-time employment or 18 months of less than full-time employment.
- (b) **Extension of probationary period.** If the department of civil service or the appointing authority determines that (1) the probationary period has been insufficient to adequately test the performance of a probationary employee or (2) the performance of a probationary employee has been ~~less than~~ unsatisfactory, the department or the appointing authority may extend the probationary period for an employee. Any extension beyond an additional 6 months requires the approval of the state personnel director. The department or appointing authority shall give written notice of the extension of the probationary period to the employee.

3-5.3 Unsatisfactory Service

- (a) **Employee without status.** If an employee without status does not perform satisfactorily during the probationary period, as provided in rule 2-3 [Service Ratings], the appointing authority may dismiss the employee during the probationary period or within 28 calendar days after the probationary period ends. The appointing authority shall give notice of a dismissal to the employee and the department of civil service no later than 28 calendar days after the probationary period ends.

(b) **Employee with status.** If an employee with status is appointed to a new classification and does not perform satisfactorily during the probationary period, as provided in rule 2-3 [Service Ratings], the appointing authority may, during the probationary period or within 28 calendar days after the probationary period ends, (1) dismiss the employee from the classified service or (2) rescind the appointment and demote the employee.

3-5.4 Satisfactory Service; Notice

If an employee's service during the probationary period is satisfactory, the appointing authority shall give notice to the employee and the department of civil service within 28 calendar days after the probationary period ends.

3-5.5 Grievance of Probationary Dismissal or Demotion

(a) **Probationary employee without status.** A probationary employee without status who is dismissed may grieve the dismissal only within the departmental steps of the civil service grievance procedure. The employee cannot appeal a final determination of the appointing authority to the department of civil service or the civil service commission unless the employee alleges that the dismissal was dismissed in violation of rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(b) **Employee with status; rescision of appointment and demotion.** A probationary employee with status whose appointment is rescinded and who is demoted to a classification level not less than the level occupied at the time of the appointment may grieve the rescision and demotion as provided in the regulations. This subsection is not applicable to the revocation of an appointment authorized in rule 3-6 [Revocation of Appointment].

(c) **Dismissal of employee with status.** A probationary employee with status who is dismissed from the classified service may grieve the dismissal as provided in the regulations.

3-5.6 Status

An employee who has been appraised, qualified, properly appointed on an indefinite or limited-term basis, and who has satisfactorily completed the probationary period has status while the employee remains continuously employed in the classified service. An employee who has attained status and later accepts an appointment to a position at a different classification level continues to have status at the former classification level while the employee remains continuously employed in the classified service. An employee whose appointment is revoked under rule 3-6 [Revocation of Appointment] cannot earn status at that classification and classification level or credit for qualification purposes.

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5-3.4 Operation of Compensation Schedules

An employee in the classified service cannot be paid less than the minimum nor more than the maximum authorized in the compensation plan, unless authorized by the state personnel director.

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(c) Performance-pay programs.

(1) **Salary range.** For each class of positions in a performance-pay program, the civil service commission shall approve a salary range that includes (1) a minimum point, (2) one or more control points, and (3) a maximum point:

(A) **Minimum point.** The minimum point is the lowest base salary payable to an employee in the classification.

(B) **Control point.** The control point is the highest base salary payable to an employee in the classification.

(C) **Maximum point.** The maximum point is the maximum total salary, including both base salary and any lump sum awards, payable to an employee in the classification during a fiscal year.

(2) **Performance-pay awards.** If an employee's position is included in a performance-pay program, the appointing authority, with the approval of the state personnel director, may award the employee an increase in base salary or a lump sum award, or both, in accordance with the compensation plan. If the employee's job performance is rated ~~less than unsatisfactory~~, the appointing authority may reduce the employee's base salary in accordance with the compensation plan. The director may set limits on the amount of performance pay that may be awarded in a fiscal year.

(3) **Grievances regarding performance-pay programs.** Performance-pay awards are discretionary. An employee is not authorized to appeal a final performance-pay grievance determination unless an appeal is specifically permitted in this rule or the applicable regulations.

(A) **Grievance and appeal permitted.** An employee aggrieved by any of the following performance-pay actions may file a grievance and appeal the final determination of the appointing authority to the department of civil service:

~~(1) The employee receives a performance rating recognized by the department of civil service as less than satisfactory.~~

~~(12)~~ The employee's pay is reduced.

~~(23)~~ The appointing authority does not rate the performance of the employee at least once annually.

(34) The performance-pay action is alleged to violate rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(B) Grievance appeal prohibited. In all other cases, an appointing authority is permitted, but not required, to authorize an employee aggrieved by a performance-pay action to file a grievance within the department's grievance procedure. However, unless expressly authorized in subsection (c)(3)(A), the employee cannot appeal a final performance-pay grievance determination of the appointing authority to the department of civil service. By way of example only, the following performance-pay actions cannot be appealed to the department of civil service:

- (1) The amount of a performance-pay award.
- (2) The failure to be awarded a performance-pay award.
- (3) The distribution of a performance-pay award between a base salary adjustment and a lump sum award.
- (4) A performance evaluation rating recognized by the department of civil service as *satisfactory* or needs improvement.
- (5) The performance evaluation or performance-pay award of another employee.
- (6) The decision to include a position into, or exclude a position from, a performance-pay program.
- (7) The performance-pay program itself, including, for example, the performance standards, departmental evaluation methods, rating categories, and departmental salary-range subdivisions.

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8-1 Grievances

8-1.1 Grievance Authorized

An employee may file a grievance with an appointing authority, as authorized in the civil service rules and regulations.

8-1.2 Time Limits

A grievance must be filed in writing within 14 calendar days after the employee knew of or, in the exercise of reasonable diligence, should have known of the circumstances giving rise to the grievance.

8-1.3 Types of Grievances

- (a) **Types of grievances permitted.** A grievance must allege that the employee is aggrieved by one or more of the following actions of the appointing authority:
- (1) Discrimination prohibited by rule 1-8 [Prohibited Discrimination].
 - (2) Reprisal prohibited by rule 2-10 [Whistleblower Protection].
 - (3) Discipline without just cause.
 - (4) Written counseling or a ~~needs improvement Annual Rating less than satisfactory service rating~~ issued without just cause.
 - (5) The abolition or creation of a position for reasons other than administrative efficiency.
 - (6) An arbitrary and capricious lateral job change resulting in substantial harm.
 - (7) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) a departmental work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.
 - (8) Any other action for which the civil service rules or regulations specifically permit a grievance to be filed.

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8-2 Appeals of Grievance Decisions

8-2.1 Appeal of Grievance Decision to Department of Civil Service Authorized

A grievant may appeal a final grievance decision of an appointing authority to the department of civil service, as authorized in the civil service rules and regulations.

8-2.2 Limitation on Grievance Appeals

A grievant is not authorized to file a grievance appeal unless the grievance alleges one or more of the following:

- (a) A tangible adverse employment action resulting from discrimination prohibited in rule 1-8 [Prohibited Discrimination].

- (b) A tangible adverse employment action resulting from reprisal prohibited by rule 2-10 [Whistleblower Protection].
- (c) Dismissal, demotion, suspension, reduction in pay, or disciplinary lateral job change without just cause.
- (d) A tangible adverse employment action caused by the abolition or creation of a position.
- (e) An arbitrary and capricious lateral job change resulting in substantial harm.
- (f) Denial of compensation to which the grievant was entitled under the civil service rules and regulations.
- (g) An *unsatisfactory* Interim or Follow-up service ~~Rating~~ issued without just cause.
- ~~(h) A less than satisfactory overall performance pay evaluation issued without just cause.~~
- (**hi**) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) a departmental work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.
- (**ij**) Any other action for which the civil service rules or regulations specifically permit a grievance appeal to be filed.

8-2.3 Further Limitations on Grievance Appeals

The following additional limitations apply to a grievance appeal unless the grievant alleges that the action of the appointing authority violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]:

(a) **Probationary employee.** A probationary employee cannot appeal the final grievance decision of the appointing authority regarding any of the following:

- (1) A ~~p~~Probationary ~~service~~ ~~Rating~~.
- (2) A decision to extend an employee's probationary term.
- (3) If the employee did not have status at the time of the probationary appointment, a decision by the appointing authority to dismiss the employee during the probationary period or within 28 calendar days after the end of the probationary period.

(b) **Reprimand, ~~or counseling~~, or Annual Rating.** An employee cannot appeal the final grievance decision of the appointing authority ~~file a grievance appeal~~ regarding a reprimand, ~~or counseling~~, or an Annual Rating.

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